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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/549,409	09/14/2005	Roque Humberto Ferreyro	110/04992	1699

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WOLF, BLOCK, SCHORR & SOLIS-COHEN LLP
250 PARK AVENUE
NEW YORK, NY 10177

EXAMINER

SIGLER, JAY R

ART UNIT	PAPER NUMBER
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3709

MAIL DATE	DELIVERY MODE
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09/20/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/549,409

Applicant(s)

FERREYRO ET AL.

Examiner

Jay R. Sigler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-77 is/are pending in the application.
- 4a) Of the above claim(s) is/are withdrawn from consideration.
- 5) ☐ Claim(s) is/are allowed.
- 6) ☐ Claim(s) is/are rejected.
- 7) ☐ Claim(s) is/are objected to.
- 8) ☒ Claim(s) 1-77 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Election/Restrictions

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group 1, claim(s) 1-5, drawn to a hydraulic device for injection of bone cement in percutaneous vertebroplasty and the method of operating.

Group 2, claim(s) 6-20, 41, 66, 67, and 69, drawn to a device for delivering a viscous material into a site in a patient and method of delivering a viscous material under fluoroscopy to a site in a patient.

Group 3, claim(s) 37-40, and 68, drawn to a method of delivering a viscous material under fluoroscopy to a site in a patient.

Group 4, claim(s) 42-45, drawn to a device for delivering a viscous material into a site in a patient.

Group 5, claim(s) 46-65, drawn to a device for delivering bone cement.

Group 6, claim(s) 70-77, drawn to a device for delivering viscous material and a method for delivering viscous material.

2. The claims 21-36 are considered linking claims between groups 2 and 4. EP 0 235 905 (EP '905) teaches a delivery tube 8 capable of containing an incompressible fluid or a viscous material. Therefore, the delivery tube of claim 21 is not considered a special technical feature.

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3. The inventions listed as Groups 1-6 do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

- a. Group 1 does not share special technical features with any of the other groups. The hydraulic transmission tube could be seen as a delivery tube and the syringe could be seen as a container, but, EP 0 235 905 (EP '905) teaches a delivery tube 8 and several containers including 1, 10, and 16. Therefore, a delivery tube and container are not special technical features.
- b. Group 2 only shares a delivery tube and container with group 4. These are not special technical features because EP '905 teaches a delivery tube 8 and several containers including 1, 10, and 16.
- c. Group 3 contains the special technical feature of requiring a fluoroscopy field. The other groups do not include this technical feature, which is probably special. All other features of group 3 are non-special technical features.
- d. Group 4 only shares a delivery tube and container with group 2, which have been shown to be non-special technical features in (b) above.
- e. Group 5 does not share technical features with any of the other groups
- f. Group 6 contains a tube adapted to deliver a viscous material into a vertebra. EP '905 teaches a syringe needle (see Figure 1, the needle is attached to part 16), or tube, that can also be seen as a delivery tube, that is capable of delivering a viscous material into a vertebra. Therefore, the tube of group 6 is

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not a special technical feature. Group 6 does not share any other technical feature with the other groups.

4. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

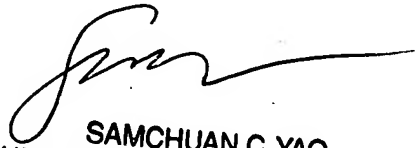
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jay R. Sigler whose telephone number is (571) 270-3647. The examiner can normally be reached on Monday through Thursday from 8 AM to 4 PM (EST).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sam Yao can be reached on (571) 272-1224. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jrs



SAMCHUAN C. YAO
SUPERVISORY PATENT EXAMINER